



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, AAT

Introduction

This hearing was convened in response to an Application for Dispute Resolution in which the Applicant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the landlord to comply with the *Residential Tenancy Act (Act)*, and for an Order requiring the landlord to provide access to the rental unit.

The Applicant and the Respondent agree that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not served to the Applicant. As such, there is no need to consider the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Applicant stated that sometime in July of 2022 he placed the Dispute Resolution Package in the Respondent's mailbox. The Respondent acknowledged receiving these documents sometime in the summer of 2022.

On June 30, 2022 a one page document was submitted to the Residential Tenancy Branch with the Applicant's Application for Dispute Resolution. The document is addressed to the Applicant and declares it was hand delivered on June 29, 2022. The document was described to the Applicant and he insists he did not submit it to the Residential Tenancy Branch. The Respondent stated that this document was not served to her by the Applicant as evidence for these proceedings. As the Applicant has not established that this document was served as evidence for these proceedings, it was not accepted as evidence for the proceedings.

In August of 2022 the Respondent submitted evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was left in the mailbox of the residential complex, although she cannot recall the date it was left there. The Applicant acknowledged that he was told where to pickup this evidence and that he located this evidence in the mailbox. As the Applicant acknowledged receiving the evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Respondent to provide the Applicant with keys to the rental unit?

Is there a need to issue an Order requiring the Respondent to provide the Applicant with access to the unit and to allow him to continue to live in the rental unit?

Is there a need to issue an Order requiring the Respondent with a written tenancy agreement?

Background and Evidence

Although I have viewed all of the documentary evidence accepted as evidence for these proceedings, not all of it is referenced in this decision. Rather, I have referenced the documentary evidence I considered relevant to my decision.

The Respondent and the Applicant agree that:

- The Applicant was renting living space in this residential complex;
- The parties do not have a written agreement;
- The Respondent has a private bedroom in the upper portion of the residential complex;
- There are two other bedrooms in the upper portion of the residential complex, which the Respondent rents out to third parties;

- The Applicant had a private bedroom in the lower portion of the residential complex;
- There are other bedrooms in the lower portion of the residential complex, which the Respondent rents out to third parties; and
- There are two bathrooms in the upper portion and two bathrooms in the lower portion of the residential complex.

The Applicant stated that on July 03, 2022 or July 04, 2022 the Respondent locked the front door of the residential complex and that he could not gain access because he had left his key inside. He stated that the Respondent would not provide him with access to the rental unit, even though the police were called to the home. The Respondent stated that this occurred on July 04, 2022.

The parties agree that after the Respondent would not provide him with access to the home and that she left his belongings outside the home. The Applicant acknowledges recovering his belongings from outside the home but he alleges that some of his property is still inside the home.

The Applicant stated that there is a shared kitchen in the lower portion of the residential complex which is shared by the people who occupy the bedrooms in the lower portion. He stated that the kitchen is equipped with 2 hotplates, a sink, a full size fridge, a microwave, and an air fryer.

The Respondent stated that the area the Applicant describes as a kitchen has a full size fridge, a microwave, a sink, and an air fryer.

The Applicant stated that:

- he never uses the kitchen or the bathrooms upstairs unless he is visiting that area as a guest, which occurs on occasion;
- the Respondent never used the kitchen or bathrooms in the lower portion of the complex;
- he never cooked in the upstairs kitchen;
- the Respondent did not cook for other occupants, although she did invite him for pizza approximately once every two weeks; and
- the Respondent did not store food in the lower "kitchen".

The Respondent stated that:

- She owns the residential complex;

- This is an open concept residence and all occupants use the living room and upstairs kitchen, regardless of the location of their bedroom;
- She sometimes used the bathroom that is located near the garage in the lower portion of the complex;
- She cooks for other occupants of the complex approximately 3-4 times per week;
- She does not cook in the area the Applicant describes as a kitchen in the lower area, as it is not suitable for cooking;
- She stores food and leftovers in the lower “kitchen”;
- She has used the microwave in the lower “kitchen” on rare occasions when the upstairs microwave is in use;
- The Respondent never cooked, but he was entitled to use the upstairs kitchen.

The Witness for the Landlord stated that:

- he visits the residential complex often;
- the Respondent frequently cooks for the occupants of the complex;
- he has observed the Applicant eating in the upstairs kitchen on approximately 3 occasions, although he cannot recall what he was eating;
- he observed the Applicant using the upstairs bathroom approximately 2 times while he was upstairs watching a movie;
- there is no hotplate in the lower portion of the residential complex;
- he has never seen the Applicant use the microwave in the lower portion of the residential complex;
- the Applicant was invited upstairs to watch movies but he could come upstairs to use the kitchen without an invitation; and
- he has observed people who lived in the lower bedrooms use the upstairs kitchen for cooking.

The Witness for the Tenant stated that:

- she was housesitting in the residential complex when the Applicant was locked out of the complex;
- that housesitting arrangement ended with some animosity between her and the Respondent;
- while she was there, she observed people from downstairs use the kitchen upstairs; and
- she does not know if the Applicant used the kitchen while she was staying in the complex.

The Respondent submitted an inspection report from the city, dated August 28, 2022, which declares there is no “2nd cooking facility”.

The Respondent submitted an unsigned document from someone with the initials “DB” and “EV”. This document declares that these individuals lived in the lower portion of the complex and that they shared the kitchen upstairs.

The Applicant stated that “DB” lived in the residential complex while he was living in it, however she did not use the upstairs kitchen.

The Respondent submitted an unsigned document from someone with the initials “AS”. This document declares that this individual is a realtor how listed this residential complex, the complex does not have a suite, and that the “room renters” share the upstairs kitchen and bathrooms.

The Applicant stated that “AS” could not know which of the renters use the upstairs kitchen.

The Respondent submitted an unsigned document from someone who identifies themselves as a neighbour. This individual declares that they have been inside the home and that the renters have “full range of the home”.

The Respondent submitted an unsigned document from “Lindon”, who declares that he lives in the complex and that “all amenities are shared throughout the entire house”.

The Respondent submitted an unsigned document from “Kody”, who declares that he lived in the complex until September of 2021 and that they “shared the entire home”.

The Respondent submitted an unsigned document from “MG”, who declares that he lives in the complex and that they “share the kitchen and bathrooms”.

Analysis

Section 4(c) of the *Residential Tenancy Act (Act)* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

On the basis of the undisputed evidence, I find that the Respondent is the owner of the residential complex, that she resided in the complex with the Applicant, and that she regularly used the kitchen in the upper portion of the complex.

After considering all the evidence in its entirety, I find that the Applicant had access to, and the right to use, the kitchen in the upper portion of the residential complex. The Applicant stated that he never cooked in the upstairs kitchen and the Respondent stated that the Applicant never cooked anywhere in the residential complex. Regardless, I find, on the balance of probabilities, that the Applicant had the right to use the upstairs kitchen if he wished to do so. I therefore find that Respondent and the Applicant shared the kitchen facilities in the upper portion of the residential complex.

I find that the preponderance of the evidence supports the Respondents' submission that this was/is an open concept residence and all occupants use the living room and upstairs kitchen, regardless of the location of their bedroom. I find that this submission is clearly supported by the written evidence of other people who currently live, and formerly lived, in the residence. Although these documents are not signed, they carry some weight in the absence of any suggestion that they were not written by those occupants.

I find that the testimony of both witnesses, one of whom was called by the Applicant, clearly supports the Respondents' submission that this was/is an open concept residence and all occupants are entitled to use the upstairs kitchen.

I find that the testimony of the Respondent's witness, who testified that there is no hotplate in the lower "kitchen", and the inspection report from the city, dated August 28, 2022, which declares there is no "2nd cooking facility", refutes the Applicant's submission that there were 2 hotplates in the lower "kitchen".

As the Applicant had the right to use the upstairs kitchen that was used regularly by the Respondent and the Respondent owns the complex, I find that the *Act* does not apply to this living arrangement.

As the *Act* does not apply to this living arrangement, I do not have jurisdiction over the living arrangement and I must refuse to consider the Application for Dispute Resolution.

Conclusion

I do not have jurisdiction over this living arrangement and I decline to consider the Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 23, 2022

Residential Tenancy Branch